

Proof-of-Concept Center Initiative  
Program Opportunity Notice (PON) 2537  
**\$15,000,000 Available**

Informational Webinar: 2:00 pm; May 23, 2012  
Mandatory Letter of Intent to Propose Due: June 6, 2012 by 5:00 PM Eastern Time\*  
**Complete Proposals Due: July 18, 2012 by 5:00 PM Eastern Time\***

**Program Summary:** The New York State Energy Research & Development Authority (NYSERDA) is interested in establishing one or more Proof-of-Concept Centers (POCC) in New York State. The POCC Initiative is built on the understanding that scalable startup companies are engines of both technology commercialization and economic growth; universities in New York are conducting a significant amount of energy-related R&D; the transition of the R&D to scalable business startups happens infrequently; changes in university-ecosystem engagement can increase the rate of startup formation and the likelihood of startup success; and, there is a key gap at the “Proof-of-Concept” stage of product development. The goal of the program is to provide early-stage investments and services to enable the development and validation of promising clean energy technologies that are, or will become, the platform for start-up companies located in New York State.

The objective of this solicitation is to select one or more teams that will design and implement sustainable programs that: (1) Accelerate the commercialization of innovations out of research institutions and into the marketplace, particularly through startups; (2) Match emerging clean energy technologies that have scalable commercialization potential, based on real market need, with the investment community; and, (3) Establish sustainable regional innovation ecosystems of potential investors and entrepreneurs in clean energy technologies and solidify the research institution linkages to them.

The maximum award is \$5 million with a contract period of five years. Cost sharing is required. The funding is viewed as an investment in the establishment of a long lasting POCC program. The demonstrated commitment of the POCC team to the long-term sustainability of the program is a very important component of proposal evaluation.

**Letter of Intent:** Proposing teams are **required** to submit a Letter of Intent (LOI) to the address below no later than June 6, 2012. Indicate your proposal Category (A or B). To the extent known, identify in the LOI the members of the proposing team. The LOI should be signed by an individual in the position to contractually commit the lead organization of the proposing team. Refer to Attachment C.

**Proposal Submission:** Proposers must submit ten (10) printed copies and one (1) electronic copy on Compact disc (CD) of the Complete Proposal, with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

**Roseanne Viscusi, PON 2537**  
**NYS Energy Research and Development Authority**  
**17 Columbia Circle**  
**Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact Jeff Peterson at (518) 862-1090, ext. 3288 or jmp@nyszerda.org. Contractual questions should be directed to: Nancy Marucci at (518) 862-1090, ext. 3335, or

nsm@nyserda.org. No communication intended to influence this procurement is permitted except by contacting Jeff Peterson (Designated Contact) at (518) 862-1090, ext. 3288 or jmp@nyserda.org. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

\*Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist may be returned. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at [www.nyserda.ny.gov](http://www.nyserda.ny.gov).

## I. Introduction

The New York State Energy Research and Development Authority (NYSERDA) is a public benefit corporation established by the New York State Legislature in 1975 with a mandate to use innovation and technology to solve some of New York's most difficult energy and environmental problems in ways that improve the State's economy.

A Proof-of-Concept Center (POCC) is an organization with a mission to accelerate technology commercialization, primarily by fostering successful startup companies. The focus of the NYSERDA POCC initiative is on clean energy-related technologies approaching the "proof-of-concept" stage and the development and implementation of a full spectrum, proactive programs to link researchers, investors, entrepreneurs, and industry.

**Informational Webinar:** NYSERDA will conduct an informational webinar to be held on May 23, 2012, at 2:00 pm. NYSERDA staff will describe the Proof-of-Concept Center Initiative and answer questions relating to possible projects, program applicability, selection criteria, and any other appropriate topics. Prior registration for the webinar conference is available, but not required. Participants can join up to 30 minutes beforehand. Instructions to participate are as follows:

### Step 1 - JOIN THE WEBINAR TO VIEW PRESENTATION SLIDES AND SUBMIT QUESTIONS

From a web browser go to <https://nyserda.ilinc.com/join/thvctjr>.

Enter your name and email and click SUBMIT.

In the "Welcome to iLinc!" window, select the "Dial into the teleconference" radio button.

Dial-In number 1-888-394-8197 and Passcode 303066 are displayed.

Write down the "Unique Identifier" number preceded by \*xx. (i.e. \*xx xxx#).

Click OK.

### Step 2 - JOIN TO THE AUDIO CONFERENCE

Dial 1-888-394-8197

Enter Passcode 303066

Once in the conference and it has begun, press \*xx, then enter your "Unique Identifier" (see above) number followed by the # key (i.e. xxx#). This optional step will enable you to 'raise your hand' to ask questions during the webinar by linking your phone and internet presence.

## II. Objectives & Expected Outcomes

NYSERDA views this program as an investment of public resources to catalyze the implementation of multiple long-lasting POCC programs. The goal of the program is to provide early-stage investments and services to enable the development and validation of promising clean energy technologies that are, or will become, the platform for start-up companies located in New York State. The objectives of the NYSERDA POCC initiative are to:

- Accelerate the commercialization of innovations out of research institutions and into the marketplace, particularly through startups.
- Match emerging clean energy technologies that have scalable commercialization potential, based on real market need, with the investment community.
- Establish sustainable regional innovation ecosystems of potential investors and entrepreneurs in clean energy technologies and solidify research institution linkages to them.

The POCC must develop and sustain relationships with regional entities that support technology-based startup companies (which may include incubators, angel and venture investors, service providers, venture development organizations, regional technology development organizations, and individual entrepreneurs and executives).

Additional relationships with the clean energy industry and investment community beyond the region could also be developed as part of the program. Some resources may be devoted to technical proof-of-concept projects, market research and opportunity assessments, business planning, and business development activities.

### **III. Program Requirements**

#### **Letter of Intent to Propose is a Mandatory Requirement**

Proposing teams are **required** to submit a Letter of Intent (LOI) to the address below no later than June 6, 2012. Indicate your proposal Category (A or B). To the extent known, identify in the LOI the members of the proposing team. The LOI should be signed by an individual in the position to commit the lead organization of the proposing team. Refer to Attachment C.

Roseanne Viscusi, PON 2537 - LOI  
New York State Energy Research and Development Authority  
17 Columbia Circle  
Albany, New York 12203-6399

#### **Maximum Award and Cost Sharing**

The maximum award is \$5 million with a contract period of five years. A minimum of 20% cost sharing over the life of the contract is required. NYSEDA funding is viewed as an investment in the establishment of a long lasting POCC program (beyond the five year contract period). The demonstrated commitment of the POCC team to the long-term sustainability of the program is a very important component of proposal evaluation.

#### **Eligibility Requirements**

The POCC must be located in New York State. POCC activities must be designed to promote the creation of new business enterprises in New York State that have a focus on the commercialization of clean energy technologies, processes, models, tools, etc. that will generate clean energy or assist the final consumer to reduce the use of electricity. Clean energy is defined here to include energy efficiency, renewable energy, and low-carbon technologies.

#### **Regional or Category Focus**

Following proposal review, evaluation and funding availability, NYSEDA intends to select the one or more proposals that are most likely to be successful over the long term without regard to Category selection. NYSEDA may, however, take the geographic distribution of POCC programs into account when making the final selection. NYSEDA may also elect to make no awards under this solicitation.

#### **Category A and Category B**

Two categories of POCC are listed below. Both types are eligible for funding. For either Category, the source of the clean energy technology innovations or intellectual property can come from any part of the state.

*Category A: Proof of Concept Centers (Institution-POCC) at Research Institutions:* The Institution-POCC is an organization within a New York-based university team or research institution that promotes the commercialization of clean energy-related research and intellectual property by fostering the creation and nurturing of new ventures in New York State. The Institution-POCC will leverage or incorporate existing campus and regional initiatives that align with its mission.

*Category B: Clean Energy Venture Development Networks (VDN-POCC):* A VDN-POCC is not university based. The VDN-POCC is a partnership that brings together industry and investor expertise to select promising New York-based pre-seed and seed stage companies commercializing clean energy technologies and provide a range of technical and business services aimed at making these companies viable and ready for investment. As a matter of course, the VDN-POCC must establish partnerships with technical and academic laboratories, incubators, angel and venture investors, service providers, venture development organizations, and so on.

#### **IV. Proposal Requirements**

Proposers must submit ten (10) printed copies and one (1) electronic copy on Compact disc (CD) of the Complete Proposal, with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to R. Viscusi at the address below:

Roseanne Viscusi, PON 2537  
NYS Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399

A Complete Proposal consists of:

- Proposal Narrative covering Sections 1 – 9 discussed below.
- Attachment A: Proposal Checklist - clearly indicate Category A or Category B (one of which must contain an original signature)
- Attachment A-1: Acceptance of Standard Terms and Conditions
- Attachment B: Disclosure of Prior Findings of Non-responsibility Form
- Attachment C: Intent to Propose Form (The LOI is also required to be submitted no later than June 6, 2012)
- Attachment D: Sample Agreement

To be responsive to this solicitation, proposing teams must submit a Proposal Narrative that includes the following information. Follow the requirements for Category A or Category B as appropriate. While page limits have not been established for each section, to allow for a thorough review and evaluation it is important that the proposal provides information in a **clear** and **succinct** manner.

#### **Category A Proposals: Proof of Concept Centers (Institution-POCC) at Research Institutions:**

The Institution-POCC is an organization within a New York-based university or research institution that promotes the commercialization of clean energy-related research and intellectual property by fostering the creation and nurturing of new ventures in New York State. The Institution-POCC will leverage or incorporate existing campus initiatives that align with its mission. Proposals under this category may be from a single institution or a group of institutions. In the latter case, a lead institution that will administer the Institution-POCC and contract with NYSERDA must be designated.

#### **Section 1: Executive Summary**

The Executive Summary should succinctly summarize the unique capabilities the proposed Institution-POCC initiative offers.

#### **Section 2: Gap and Market Analysis**

The Gap and Market Analysis section should reflect the knowledge of the proposing Institution-POCC team in the clean energy technology market, and gaps in the commercialization of such technologies through startup

companies. Clean energy is defined here to include energy efficiency, renewable energy, and low-carbon technologies. The proposer may elect to focus on a subset of these technologies, if it believes that such subset encompasses sufficient activity to support an effective Institution-POCC, but this is not required. At a minimum, the section should contain a discussion of the following items:

- Distinguishing characteristics of the clean energy technology market the Institution-POCC team is targeting.
- Expected five-year growth of the market.
- Current intellectual property portfolio within the Institution-POCC team, including the lead institution and partner institutions, if any, that could serve the clean energy technology market.
- Active applied research activities of both Institution-POCC team members and others within the region that could access the Institution-POCC.
- Inventory and assessment of entrepreneurial and business startup support programs within the Institution-POCC team and within the region that are accessible to the Institution-POCC.
- Existing gaps or weaknesses in the support for entrepreneurs and business startups in the Institution-POCC and region.
- Regional assets and resources that will be formally or informally available to the program and a description of how they will be utilized by the Institution-POCC.

### **Section 3: Institutional Capabilities and Commitment**

Provide the following information and discuss the relevance of the information to the Institution-POCC. If the proposal is from a team, the information should be provided separately for the lead institution and partner institutions.

- Describe the proposer's capability to produce intellectual property and perform research and development in the clean energy technologies that are the subject of the proposal. List members of faculty and their relevant research interests. Indicate their tenure status. List relevant research grants awarded within the past three years; note which have been sponsored by private industry.
- Describe the proposer's capability to commercialize technology and foster startup companies. Indicate which academic and administrative units within the institution have roles within technology commercialization and entrepreneurship, and which of these contribute to the proposed Statement of Work below (Section 5). Outline the existing budget and staff currently committed to technology commercialization and innovation activities.
- Describe the proposer's record in commercializing technology and fostering startup companies, outside its medical school, if any. For the past three years, indicate the annual research expenditures of the institution, excepting its medical school. Indicate the number of intellectual property licenses executed for the past three years, excepting those related to IP developed within the proposer's medical school. Indicate the number of options executed for the past three years, excepting those related to IP developed within the proposer's medical school. Indicate the number of startup companies that were dependent on licensing of the proposer's IP for the past three years, excepting those related to IP developed within the proposer's medical school.
- Outline existing and planned administrative and faculty policies, including tenure policies, that support new business development and technology commercialization. Indicate whether there are exceptions, or special procedures and practices that will be applied within the Institution-POCC.
- Outline existing and planned administrative policies to manage intellectual property for maximum impact on new business development. Indicate whether there are exceptions, or special procedures and practices that will be applied within the Institution-POCC to further new business development.

## **Section 4: Governance Structure, Management and Proposing Team Qualifications**

Present in graphical form and describe in text the organization of the Institution-POCC, and roles and responsibilities of all individuals proposed to be involved with its design, implementation and operation.

- Identify the position and level of authority for the Director of the Institution-POCC. Be specific as to the Director's reporting relationships on campus and chain-of-authority to the President/Chancellor or Provost level, as appropriate. For each individual within the proposing POCC team, identify the position, level of authority and reporting relationship to the Director of the Institution-POCC. For individual team members in partner institutions, identify position and level of authority within those institutions.
- Outline relevant qualifications, abilities, and experience of all individuals named above. Describe the level of involvement of each team member in relevant past activities.
- Brief summary resumes of key individuals should be included in Section 9 (Additional Information).
- Describe agreements and understandings between the Institution-POCC and other programmatic or administrative units within the lead institution. Document these in the form of letters of commitment in Section 9 (Additional Information). Describe agreements and understandings between the lead institution and partner institutions. Discuss agreements relative to intellectual property (IP) ownership on any new IP that is developed under the POCC program. Document these in the form of letters of commitment in Section 9 (Additional Information).
- Identify gaps in the management team, if any, and the proposed strategy to fill the gaps. If the Director of the Institution-POCC is yet to be hired, provide a job description and list of qualifications.
- Identify the membership and authority of external advisory committees that will provide direction to the Institution-POCC. To the extent that individual members have been identified, please provide brief summary resumes and letters of commitment in Section 9 (Additional Information).

## **Section 5: Implementation Strategy and Plan**

*This section will serve as the basis for the Statement of Work for the POCC contract. The Statement of Work specifically delineates each step or procedure required to accomplish the project objectives. Therefore, each action shall be identified, indicating who will perform it, how it will be performed and its intended result. Be clear and specific: concentrate on how and not why. Deliverables should, at a minimum, include the items discussed in Section 6 (Measure of Success) and Section 8 (Performance Payment Plan).*

A POCC program can be structured around the three integrated stages of activities listed below. Key outcomes for individuals participating in the POCC program include the ability to clearly articulate the innovation (technology, product or service) to a range of external parties; verification of technology performance; clear direction of an intellectual property protection strategy; and, appreciation of the market opportunity of a technology. It is expected that the POCC will design, implement and administer integrated programs in these three broad areas:

- Idea generation and evaluation – bringing entrepreneurial and market expertise to the invention stage.
- Proof-of-Concept evaluation – confirmation of market relevant technology performance.
- Early-stage venture creation – building a business model to bring the invention to market.

The Implementation Strategy and Plan should include specific details on the design, operation and expected outcomes of the POCC. A Proof-of-Concept Center is expected to provide services similar to those outlined below. Describe how the selected activities will be completed. Identify each task necessary to complete the activity. Include a schedule of when these tasks, deliverables and expected outcomes will occur.

- Encourage and facilitate the exchange of ideas between innovators and the entrepreneurship and investment community.
- Link the research community in the region of the POCC to existing programs that support innovation and early stage business development.

- Provide nominal funding to support the proof-of-concept testing/evaluation and commercialization of promising research.
- Support business development and commercialization activities that are necessary for the successful launch of a product or service business.
- Support educational programs and events to prepare students and researchers for entrepreneurial challenges and work environments and to promote collaboration.

### **Section 6: Measure of Success**

An important objective of the program is to promote the establishment of a POCC that will be long-lasting. Identify the objective variables that will be used to measure the performance of the POCC and form the basis of a decision of the POCC team to fund the operation of the POCC at the conclusion of NYSERDA funding support. Explain the rationale for selecting these variables. Describe the methods to track the variables and desired outcomes. These measures should be integrated into the Preliminary Sustainability Plan and discussed in each Quarterly report.

### **Section 7: Financial Management Plan and Preliminary Sustainability Plan**

Outline the financial management plan for the POCC for the five year contract period. Include a table with an annual cash flow projection for this period of time. Clearly identify the sources and uses of funds by task and by year. The cash flow projections should show non-NYSERDA funding of at least 20% of the total cost of the project. Cost sharing can be from the proposer, other team members, and other government or private sources. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions.

Present a Preliminary Sustainability Plan based on the outcomes of the objective variables from Section 6 (Measure of Success) and the Implementation Plan. The Preliminary Sustainability Plan should outline the POCC strategy to continue operation beyond the 5-year NYSERDA funding period. Identify expected sources of funding and other resources necessary for long term POCC operation. Assess the risk that the funding and resources will not be available when required.

### **Section 8: Performance Payment Plan**

Structure a performance-based payment plan such that 100% of requested NYSERDA funds are allocated to performance milestones. The Plan should show a distribution of NYSERDA funding that is essentially level across the 5-year program. Payments will be based on the performance of activities involving the clean energy technologies.

Funding will be provided according to a milestone payment plan. NYSERDA will pay the successful proposer a negotiated fixed amount upon accomplishment of the milestones and provision of the associated deliverables in a form satisfactory to the NYSERDA Project Manager. Milestones may be thought of in terms of three Payment Groups.

Payment Group A includes POCC management tasks and deliverables. These include items such as reporting, outreach, program development, development of administrative infrastructure, entrepreneurship programs, workshops and events, and strategic planning activities that generate deliverables of value that merit milestone payments. It is expected that no more than **one-fifth** of total NYSERDA funding under this PON will be paid out under Payment Group A milestones. Required elements for the Performance Payment Plan that fall under Payment Group A include:

- Documentation of the formal establishment and operation of the Implementation Plan and, as necessary contractual relationships with team members.

- Quarterly Reports and Performance Documentation: NYSERDA intends to communicate the results and performance of individual POCC programs to a broad audience.
- Annual metrics reports: On an annual basis submit an analysis of the change from the baseline of activity (pre-POCC) of POCC team members in the commercialization of clean energy technologies. In addition, provide a summary of metrics addressing the anticipated energy, environmental and economic benefits that could be realized by the POCC supported clean energy technologies. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented. Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). Reports shall continue to be submitted for five consecutive calendar years after the project is completed.
- Annual POCC Review Workshop: NYSERDA intends to hold an annual POCC workshop to bring POCC teams, stakeholders and a NYSERDA POCC review panel together to discuss POCC experiences. The goal of the workshop is for POCC teams to benefit from the experience of other teams and for NYSERDA to review performance in a structured format.
- Sustainability Plan: Concurrent with the 9<sup>th</sup> Quarterly Report, provide a Sustainability Plan for the POCC that is based on operating the program for 2 years. Recommend necessary project/program changes to increase the likelihood of the POCC operating beyond the completion of NYSERDA funding. Changes to the milestone payment plan may also be considered.
- Virtual Network and Collaboration: NYSERDA is building a series of online communities (social media programs) that will link together stakeholders in the clean energy technology business ecosystem. The POCC will be expected to develop and implement strategies to regularly and actively participate in the NYSERDA social media site.

Payment Group B includes tasks and deliverables related to specific technologies, projects, or startup companies. These include the accomplishment of scheduled project-specific tasks, such as selection of a proof-of-concept project, completion of an opportunity assessment, production of a business plan, completion of an intellectual property review, or other milestones as determined by the POCC program and as appropriate for the technology/project/startup. These project-specific tasks are expected to generate deliverables of value that merit milestone payments. It is expected that approximately **one-half** of total NYSERDA funding under this PON will be paid out under Payment Group B milestones.

Payment Group C includes outcome milestones related to new startup companies emerging from the POCC's work. These may include the establishment of a new company to commercialize POCC clean energy technology, the completed licensing of intellectual property to a new startup for commercialization, the introduction of a first commercial product incorporating the technology, the successful raising of early stage capital, or other outcomes that support the objectives of the program. A minimum of **one-fourth** of the NYSERDA funding under this PON will be reserved for such outcome milestones. POCC startups are by definition at an early stage, and therefore a certain amount of uncertainty surrounds the attainment of such outcomes by any given technology or project. Nevertheless, it is anticipated that some subset of projects will result in such outcomes.

### **Section 9: Additional Information**

Include any resumes, company qualifications, financial statements, or ancillary information which is deemed necessary to support your proposal.

- **Brief Summary Resumes** of key individuals to support the material provided in Section 4 (Governance Structure, Management and Proposing Team Qualifications).
- **Letters of Interest or Commitment** from team members, advisory committee members and any other organization expected to do some of the work, provide services or equipment, or share in the non-NYSERDA cost. The letter should include a description of the organization and their planned participation and signed by a person authorized to contractually obligate the organization. Absence of letters of interest or commitment will be interpreted as the proposer not having support from the identified parties.

If appropriate, also include:

- The Proposal Evaluation section includes the items that will be used to evaluate each proposal. Carefully review the Evaluation Criteria and place in this section any material that is not provided in other parts of the proposal.
- Potential Conflicts of Interest. Identify the nature of any potential conflicts of interest among team members in providing services to NYSERDA under this PON. Fully discuss possible conflicts of interest, actual and perceived, that could arise in connection with performance by team members of the proposed contract. Describe how your firm would resolve conflicts of interest. In the event that NYSERDA determines that a team member may have a conflict of interest or the appearance of such, NYSERDA may: (1) take this into consideration in evaluating the proposal; (2) exclude the proposer from consideration for an award; (3) adjust the scope of work to avoid the conflict or appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

**Category B Proposals: Clean Energy Venture Development Networks (VDN-POCC):**

A VDN-POCC is not based within a university. The VDN-POCC is a partnership that brings together industry and investor expertise to select promising New York-based pre-seed projects and seed stage companies commercializing clean energy technologies and provide a range of technical and business services aimed at making these companies viable and ready for investment. As a matter of course, the VDN-POCC must establish partnerships with technical and academic laboratories, incubators, angel and venture investors, service providers, venture development organizations, and so on. Proposals in this category need not be led by a university or research institution, however, a lead proposer must be designated. A VDN-POCC may, but is not required to, address a geographic area that is broader than the region surrounding an Institution-POCC, if only because of the scope of its network of partnerships.

**Section 1: Executive Summary**

The Executive Summary should succinctly summarize the unique capabilities the proposed VDN-POCC initiative offers.

**Section 2: Gap and Market Analysis**

The Gap and Market Analysis section should reflect the knowledge of the proposing VDN-POCC team in the clean energy technology market, and gaps in the commercialization of such technologies through startup companies. Clean energy is defined here to include energy efficiency, renewable energy, and low-carbon technologies. The proposer may elect to focus on a subset of these technologies, if it believes that such subset encompasses sufficient activity to support an effective VDN-POCC, but is not required to. At a minimum, the section should contain a discussion of the following items:

- Distinguishing characteristics of the clean energy technology market the VDN-POCC team is targeting.
- Expected five year growth of the market.
- Current intellectual property portfolio accessible within the VDN-POCC team that could serve the clean energy technology market.
- Active applied research activities of VDN-POCC team members and other parties that could access the services and programs of the VDN-POCC.
- Inventory and assessment of entrepreneurial and business startup support programs within the VDN-POCC team.
- Existing gaps or weaknesses in the support for entrepreneurs and business startups within the VDN-POCC team and the geographic area within which the VDN-POCC operates.

- Local assets and resources that will be formally or informally available to the program and a description of how they will be utilized by the VDN-POCC.

### **Section 3: VDN Capabilities and Commitment**

Provide the following information and discuss the relevance of the information to the VDN-POCC.

- Describe the proposer's capability to gain access to intellectual property and research and development resources in the clean energy technologies that are the subject of the proposal. List institutional partners to the department or laboratory level. Document these relationships in the form of letters of commitment in Section 9 (Additional Information).
- Describe the proposer's capability to commercialize technology and foster startup companies. Outline the existing budget and staff currently committed to technology commercialization and innovation activities within the lead proposer, and within partner organizations. Document the availability of these relationships and resources in the form of letters of commitment in Section 9 (Additional Information).
- Describe the proposer's record in commercializing technology and fostering startup companies.
- Outline policies, practices and programs that support new business development and technology commercialization. Indicate whether enhancements or special procedures and practices will be applied within the VDN-POCC.
- Outline existing and planned administrative policies to manage intellectual property for maximum impact on new business development. Indicate whether partner institutions have agreed to special procedures and practices that will be applied within the VDN-POCC to further new business development. Document these in the form of letters of commitment in Section 9 (Additional Information).

### **Section 4: Governance Structure, Management and Proposing Team Qualifications**

Present in graphical form and describe in text the organization of the VDN-POCC, and roles and responsibilities of all individuals proposed to be involved with its design, implementation and operation.

- Identify the position and level of authority for the Director of the VDN-POCC. For each individual within the proposing POCC team, identify the position, level of authority and reporting relationship to the Director of the VDN-POCC. For individual team members in partner institutions and organizations, identify position and level of authority within those institutions and organizations.
- Outline relevant qualifications, abilities, and experience of all individuals named above. Describe the level of involvement of each team member in relevant past activities.
- Brief summary resumes of key individuals should be included in Section 9 (Additional Information).
- Describe agreements and understandings between the lead proposer for the VDN-POCC and other VDN-POCC partners. Discuss agreements relative to intellectual property (IP) ownership on any new IP that is developed under the POCC program. Document these in the form of letters of commitment in Section 9 (Additional Information).
- Identify gaps in the management team, if any, and the proposed strategy to fill the gaps. If the Director of the VDN-POCC is yet to be hired, provide a job description and list of qualifications.
- Identify the membership and authority of external advisory committees that will provide direction to the Institution-POCC. To the extent that individual members have been identified, please provide brief summary resumes and letters of commitment in Section 9 (Additional Information).

### **Section 5: Implementation Strategy and Plan**

*This section will serve as the basis for the Statement of Work for the POCC contract. The Statement of Work specifically delineates each step or procedure required to accomplish the project objectives. Therefore, each action shall be identified, indicating who will perform it, how it will be performed and its intended result. Be clear and*

*specific: concentrate on how and not why. Deliverables should, at a minimum, include the items discussed in Section 6 (Measure of Success) and Section 8 (Performance Payment Plan).*

A POCC program can be structured around the three integrated stages of activities listed below. Key outcomes for individuals participating in the POCC program include the ability to clearly articulate the innovation (technology, product or service) to a range of external parties; verification of technology performance; clear direction of an intellectual property protection strategy; and, appreciation of the market opportunity of a technology. It is expected that the POCC will design, implement and administer integrated programs in these three broad areas:

- Idea generation and evaluation – bringing entrepreneurial and market expertise to the invention stage.
- Proof-of-Concept evaluation – confirmation of market relevant technology performance.
- Early-stage venture creation – building a business model to bring the invention to market.

The Implementation Strategy and Plan should include specific details on the design, operation and expected outcomes of the POCC. A Proof-of-Concept Center is expected to provide services similar to those outlined below. Describe how the selected activities will be completed. Identify each task necessary to complete the activity. Include a schedule of when these tasks, deliverables and expected outcomes will occur.

- Encourage and facilitate the exchange of ideas between innovators and the entrepreneurship and investment community.
- Link the research community in the region of the POCC to existing programs that support innovation and early stage business development.
- Provide nominal funding to support the proof-of-concept testing/evaluation and commercialization of promising research.
- Support business development and commercialization activities that are necessary for the successful launch of a product or service business.
- Support educational programs and events to prepare students and researchers for entrepreneurial challenges and work environments and to promote collaboration.

## **Section 6: Measure of Success**

An important objective of the program is to promote the establishment of a POCC that will be long lasting. Identify the objective variables that will be used to measure the performance of the POCC and form the basis of a decision of the POCC team to fund the operation of the POCC at the conclusion of NYSERDA funding support. Explain the rationale for selecting these variables. Describe the methods to track the variables and desired outcomes. These measures should be integrated into the Preliminary Sustainability Plan and discussed in each Quarterly report.

## **Section 7: Financial Management Plan and Preliminary Sustainability Plan**

Outline the financial management plan for the POCC for the five-year contract period. Include a table with an annual cash flow projection for this period of time. Clearly identify the sources and uses of funds by task and by year. The cash flow projections should show non-NYSERDA funding of at least 20% of the total cost of the project. Cost sharing can be from the proposer, other team members, and other government or private sources. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions.

Present a Preliminary Sustainability Plan based on the outcomes of the objective variables from Section 5 (Measure of Success) and the Implementation Plan. The Preliminary Sustainability Plan should outline the POCC strategy to continue operation beyond the 5-year NYSERDA funding period. Identify expected sources of funding and other resources necessary for long term POCC operation. Assess the risk that the funding and resources will not be available when required.

## Section 8: Performance Payment Plan

Structure a performance-based payment plan such that 100% of requested NYSERDA funds are allocated to performance milestones. The Plan should show a distribution of NYSERDA funding that is essentially level across the 5 year program. Payments will be based on the performance of activities involving the clean energy technologies.

Funding will be provided according to a milestone payment plan. NYSERDA will pay the successful proposer a negotiated fixed amount upon accomplishment of the milestones and provision of the associated deliverables in a form satisfactory to the NYSERDA Project Manager. Milestones may be thought of in terms of three categories.

Payment Group A includes POCC management tasks and deliverables. These include items such as reporting, outreach, program development, development of administrative infrastructure, entrepreneurship programs, workshops and events, and strategic planning activities that generate deliverables of value that merit milestone payments. It is expected that no more than **one-fifth** of total NYSERDA funding under this PON will be paid out under Payment Group A milestones. Required elements for the Performance Payment Plan that fall under Payment Group A include:

- Documentation of the formal establishment and operation of the Implementation Plan and, as necessary contractual relationships with team members.
- Quarterly Reports and Performance Documentation: NYSERDA intends to communicate the results and performance of individual POCC programs to a broad audience.
- Annual metrics reports: On an annual basis submit an analysis of the change from the baseline of activity (pre-POCC) of POCC team members in the commercialization of clean energy technologies. In addition, provide a summary of metrics addressing the anticipated energy, environmental and economic benefits that could be realized by the POCC supported clean energy technologies. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented. Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). Reports shall continue to be submitted for five consecutive calendar years after the project is completed.
- Annual POCC Review Workshop: NYSERDA intends to hold an annual POCC workshop to bring POCC teams, stakeholders and a NYSERDA POCC review panel together to discuss POCC experiences. The goal of the workshop is for POCC teams to benefit from the experience of other teams and for NYSERDA to review performance in a structured format.
- Sustainability Plan: Concurrent with the 9<sup>th</sup> Quarterly Report, provide a Sustainability Plan for the POCC that is based on operating the program for 2 years. Recommend necessary project/program changes to increase the likelihood of the POCC operating beyond the completion of NYSERDA funding. Changes to the milestone payment plan may also be considered.
- Virtual Network and Collaboration: NYSERDA is building a series of online communities (social media program) that will link together stakeholders in the clean energy technology business ecosystem. The POCC will be expected to develop and implement strategies to regularly and actively participate in the NYSERDA social media site.

Payment Group B includes tasks and deliverables related to specific technologies, projects, or startup companies. These include the accomplishment of scheduled project-specific tasks, such as selection of a proof-of-concept project, completion of an opportunity assessment, production of a business plan, completion of an intellectual property review, or other milestones as determined by the POCC program and as appropriate for the technology/project/startup. These project-specific tasks are expected to generate deliverables of value that merit milestone payments. It is expected that approximately **one-half** of total NYSERDA funding under this PON will be paid out under Payment Group B milestones.

Payment Group C includes outcome milestones related to new startup companies emerging from the POCC's work. These may include the establishment of a new company to commercialize POCC technology, the completed licensing of intellectual property to a new startup for commercialization, the introduction of a first commercial product incorporating the technology, the successful raising of early stage capital, or other outcomes that support the objectives of the program. A minimum of **one-fourth** of the NYSERDA funding under this PON will be reserved for such outcome milestones. POCC startups are by definition at an early stage, and therefore a certain amount of uncertainty surrounds the attainment of such outcomes by any given technology or project. Nevertheless, it is anticipated that some subset of projects will result in such outcomes.

### **Section 9: Additional Information**

Include any resumes, company qualifications, financial statements, or ancillary information which is deemed necessary to support your proposal.

- **Brief Summary Resumes** of key individuals to support the material provided in Section 4 (Governance Structure, Management and Proposing Team Qualifications).
- **Letters of Interest or Commitment** from team members, advisory committee members and any other organization expected to do some of the work, provide services or equipment, or share in the non-NYSERDA cost. The letter should include a description of the organization and their planned participation and signed by a person authorized to contractually obligate the organization. Absence of letters of interest or commitment will be interpreted as the proposer not having support from the identified parties.

If appropriate, also include:

- The Proposal Evaluation section includes the items that will be used to evaluate each proposal. Carefully review the Evaluation Criteria and place in this section any material that is not provided in other parts of the proposal.
- Potential Conflicts of Interest. Identify the nature of any potential conflicts of interest among team members in providing services to NYSERDA under this PON. Fully discuss possible conflicts of interest, actual and perceived, which could arise in connection with performance by team members of the proposed contract. Describe how your firm would resolve conflicts of interest. In the event that NYSERDA determines that a team member may have a conflict of interest or the appearance of such, NYSERDA may: (1) take this into consideration in evaluating the proposal; (2) exclude the proposer from consideration for an award; (3) adjust the scope of work to avoid the conflict or appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

Proposers must submit ten (10) printed copies and one (1) electronic copy on compact disc (CD) of the proposal, with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. to the attention of Roseanne Viscusi at the address on the front of this Program Opportunity Notice/Request for Proposal. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist may be returned.** Faxed or e-mailed copies will not be accepted.

#### **Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k**

Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. (The text of the laws are available at: <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>). In compliance with §139-j and §139-k of the State Finance Law, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form. Failure to include a signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal.

## **V. Proposal Evaluation**

NYSERDA will use a Technical Evaluation Panel (TEP) to evaluate and score proposals submitted under this solicitation. The TEP will include NYSERDA staff plus external members with the appropriate level of expertise to provide insights to the evaluation. **The following items will serve as the primary criteria used to evaluate proposals.** It is important the proposals include information and material in sufficient detail to allow the TEP to adequately evaluate the proposal.

### **Market Analysis**

- Does the POCC team demonstrate access to sufficient intellectual property and research that will result in a critical mass of intellectual property in clean energy technology for the POCC? How strong is the team's record of performing energy-related R&D that is of interest to industry?
- Does the proposal indicate awareness of entrepreneurial and business support resources both within the proposing POCC team and the region around the POCC? How deeply engaged with these resources has the POCC been?
- Does the proposal identify challenges and risks associated with POCC performance and propose mitigation strategies? How significant are these risks, and how effective are the mitigation strategies expected to be?

### **Institutional Commitment**

- Does the proposal include sufficient information on the existing budget and staff currently committed to technology commercialization and innovation activities to evaluate the POCC team experience in these areas? How strong is this experience?
- How strong is the proposer's commitment to the rapid commercialization of new innovations, as indicated by its existing and planned administrative, faculty, and IP policies?

### **Governance Structure, Management and Proposing Team Qualifications**

- How strong are the POCC team members' credentials in entrepreneurship and technology commercialization?
- Does the POCC Director have sufficient management authority to implement an effective POCC?

- Does the POCC team include individuals with the demonstrated ability to evaluate technology commercialization needs and identify resources to address them?
- Does the POCC team include individuals with experience to support entrepreneurs and innovators at appropriate phase(s) of the process, such as assessments of commercialization potential, patenting, licensing, business formation, financing, and marketing?
- How well are regional assets and resources for entrepreneurship and business support integrated into the POCC program?
- Does the external committee have strong representation from the private sector and venture investment communities, and does the committee have the authority to effectively govern the program? Do the commitment letters from POCC team members, advisory committee members and any other partners identified in the proposal demonstrate tangible commitment to the success and long term viability of the POCC?

### **Implementation Strategy and Plan**

- Will implementation of the Plan result in the identification and evaluation of promising research that can serve as the platform for clean energy technology business formation, and accelerate progress to the viability of any resulting business?
- Would implementation of the Plan result in an ongoing exchange of ideas between innovators and the entrepreneurship and investment community?
- Will the POCC marshal existing programs in the region to support innovation and early stage business development?
- Does the POCC program support business development and commercialization activities that are necessary for the successful launch of a product or service business?
- Will the POCC support educational programs and events to prepare students and researchers for entrepreneurial challenges and work environments to promote collaboration?
- Is the POCC design a creative solution based on an understanding of the role, benefit, and best practices of a Proof of Concept Center?
- Does the Plan fill the gaps in the research-to-commercialization continuum and eliminate obstacles to commercialization?
- Does the Plan present a clear, specific, and realistic approach to accelerating the movement of clean energy technologies to the marketplace?
- Is there a demonstrated understanding and effective design of the process for establishing proof-of-concept and moving technologies toward commercialization?
- Is there a sound approach to identify promising early-stage clean energy technologies that could be the foundation for new ventures, including those within research laboratories or incubators?

### **Measure of Success**

- Does the proposal include a sound rationale for selecting the objective variables to measure the success of the POCC?
- Is there an effective plan to measure progress towards the outcomes adequate?

### **Financial Management and Preliminary Sustainability Plan**

- Is there a clear intent of the POCC team to sustaining the program beyond the five-year time horizon?
- Does the cash flow projection table present a cost sharing commitment greater than or equal to 20% of the total NYSERDA contribution (which must be less than or equal to \$5 million)?
- Does the Financial Plan present a rationale budget allocation necessary to achieve the goals and objectives of the POCC program?

### **Performance Payment Plan**

- Does the proposed program targets and payment plan demonstrate an appropriate level of risk sharing regarding POCC operation? Are deliverables tangible? Do they represent progress towards program goals? Do they reward real outcomes?

**New York State Benefits**

- Likelihood that NYSEERDA investment in the POCC will result in a sustainable model to identify marketable clean energy technology innovations and use the innovations as a platform for new business formation.
- Quantifiable benefits that go beyond the applicant and benefit the regional economy.

**Other Considerations** – Additionally, proposals will be reviewed to determine if they reflect NYSEERDA's overall objectives, including: risk/reward relationships, similar ongoing or completed projects, and the general distribution of projects among categories, technologies, industries and other organizations. NYSEERDA may take the geographic distribution of POCC programs into account when making the final selection.

**VI. GENERAL CONDITIONS**

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSEERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSEERDA possesses. Public Officers Law, Section 87(2) (d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSEERDA that the proposer wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://nyserda.ny.gov/~media/Files/About/Contact/NYSEERDARegulations.ashx> However, NYSEERDA cannot guarantee the confidentiality of any information submitted.

**Omnibus Procurement Act of 1992** - It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, as bidders, subcontractors, and suppliers on its procurement Agreements.

Information on the availability of New York subcontractors and suppliers is available from:

Empire State Development  
Division for Small Business  
30 South Pearl Street  
Albany, NY 12245

A directory of certified minority- and women-owned business enterprises is available from:

Empire State Development  
Minority and Women's Business Development Division  
30 South Pearl Street  
Albany, NY 12245

**State Finance Law sections 139-j and 139-k** - NYSEERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html> The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure

statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

**Tax Law Section 5-a** - NYSEDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSEDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)) Prior to contracting with NYSEDA, the prospective contractor must also certify to NYSEDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSEDA. See, ST-220-CA (available at [http://www.tax.ny.gov/pdf/2006/fillin/st/st220ca\\_606\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/2006/fillin/st/st220ca_606_fill_in.pdf)). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>

**Contract Award** - NYSEDA anticipates making multiple awards under this solicitation. It may award a contract based on initial proposals without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSEDA may request additional data or material to support applications. NYSEDA will use the Sample Agreement to contract successful proposals. NYSEDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the submitted proposal. NYSEDA expects to notify proposers in approximately eight weeks from the proposal due date whether your proposal has been selected to receive an award.

**Limitation** - This solicitation does not commit NYSEDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSEDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSEDA's best interest. NYSEDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement.

**Disclosure Requirement** - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSEDA after the award of a contract, NYSEDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

\*\*\*\*\*

## VII. Attachments

- Attachment A: Proposal Checklist - clearly indicate Category A or Category B (one of which must contain an original signature)
- Attachment A-1: Acceptance of Standard Terms and Conditions
- Attachment B: Disclosure of Prior Findings of Non-responsibility Form
- Attachment C: Intent to Propose Form
- Attachment D: Sample Agreement



**ATTACHMENT A – PON No. 2537 PROPOSAL CHECKLIST (MANDATORY)**

Proposal Title		POCC Category (A or B):	Due Date : July 18, 2012	
<b>Primary Contact</b> (Prime Contractor)			Title	
Company		Phone	Fax	
		e-mail		
Federal Tax Identification #/Social Security				
Address		City	State or Province	Zip
<b>Secondary Contact</b>			Title	
Company		Phone	Fax	
		e-mail		
Address		City	State or Province	Zip
<p>THE PRIME CONTRACTOR MUST <u>SIGN THIS FORM BELOW</u> and ANSWER THE FOLLOWING QUESTIONS:</p> <p>Do you accept all Terms &amp; Conditions in the Sample Agreement? (If no, explain on separate page) <span style="float:right">__ Yes __ No</span>  <b>(NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)</b></p> <p>Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) <span style="float:right">__ Yes __ No</span></p> <p>Are you a Minority or Women-Owned Business Enterprise? <span style="float:right">__ Yes __ No</span></p> <p>Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? <span style="float:right">__ Yes __ No</span></p> <p>Are you submitting the required number of copies? (See proposal instructions.) <span style="float:right">__ Yes __ No</span></p> <p>Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? <span style="float:right">__ Yes __ No</span>          (if yes, explain on separate page)</p>				
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?				
<p>[Provide list of items consistent with Proposal Requirements section of solicitation]</p>		Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) <span style="float:right">___ Exceptions to</span> Terms & Conditions (if applicable) Completed and Signed Contract Pricing Proposal Form(s)		
		Disclosure of Prior Findings of Non-responsibility Form		
AUTHORIZED SIGNATURE & CERTIFICATION				
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that I have read and reviewed the Standard Terms and Conditions set forth in the attached Sample Agreement and that I accept all terms unless otherwise noted herein, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I, the undersigned, am authorized to commit my organization to this proposal.				
Signature		Name		
Title		Organization		
Phone				

**NOTE:** This completed form **MUST** be signed and attached to the front of all copies of your proposal.

**Attachment A-1  
Acceptance of Standard Terms and Conditions**

**(Mandatory)**

This is to verify, as the Authorized Signatory, I have read and reviewed the Standard Terms and Conditions set forth by NYSERDA under Attachment F: Sample Agreement. I accept all of the Terms and Conditions except for those listed below. Furthermore, I acknowledge that NYSERDA may or may not accept any or all of the listed exceptions, and that if they are not listed here, ANY exceptions submitted after the due date will NOT be accepted.

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date

***NYSERDA will only negotiate exceptions to the Standard Terms and Conditions that are presented at the time of proposal. For awarded proposers who do not have any exceptions to the Standard Terms and Conditions, priority will be given during the contracting process.***

Exceptions: (List individually)



**Attachment B: PON 2537  
Disclosure of Prior Findings of Non-responsibility Form  
(Mandatory)**

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number:		
Name and Title of Person Submitting this Form:		
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years? (Please indicate with an "X")	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law? (Please indicate with an "X")	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please indicate with an "X")	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		
Basis of Finding of Non-responsibility: (Add additional pages as necessary)		

Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information? (Please indicate with an "X")		Yes
		No

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding: (Add additional pages as necessary)

Offerer certifies that all information provided to NYSERDA with respect to State Finance Law §139-k is complete, true, and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_ Title: \_\_\_\_\_

### ATTACHMENT C

#### INTENT TO PROPOSE

Please submit the following information to NYSERDA **by June 6, 2012**:

Roseanne Viscusi - PON No. 2537  
New York State Energy Research and Development Authority  
17 Columbia Circle, Albany, NY 12203-6399  
fax (518) 862-1091 e-mail rdv@nyserda.org

Name:		Title:			
Organization:					
Address:					
Address:					
City:	County:	State:	Zip +4:		
E-mail Address:			Phone No.: (     )		
Web Site:			Fax No.: (     )		
Authorized signature:				Date:	

Please check all that apply:

We **do** intend to submit a proposal.

We **do not** intend to submit a proposal because: \_\_\_\_\_

I did not receive a notice in the mail. Please **add** me to NYSERDA's database.

Please **delete** me from NYSERDA's database.

---

How did you receive information about this solicitation? (Please check all that apply.)

<input type="checkbox"/> announcement notice in mail	<input type="checkbox"/> NYSERDA's website
<input type="checkbox"/> notice in NYS Contract Reporter	<input type="checkbox"/> word-of-mouth
<input type="checkbox"/> notice in other media (please list):	<input type="checkbox"/> NYSERDA staff/booth at meeting (please specify):

If you plan to submit a proposal, please provide the title and a brief abstract:

Attachment D – Sample Agreement  
**New York State Energy Research and Development Authority**  
**AGREEMENT**

- |                                    |                           |
|------------------------------------|---------------------------|
| 1. Agreement Number:               | 5. Project Period:        |
| 2. Contractor:                     | 6. Federal ID:            |
| 3. Contact:                        | 7. Total Amount of Award: |
| 4. Award Date:                     |                           |
| 8. Commitment Terms and Conditions |                           |

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement; and
- Exhibit E, Guidelines for NYSERDA Print Deliverables.

9. ACCEPTANCE

**[CONTRACTOR]**

**NEW YORK STATE ENERGY RESEARCH  
AND DEVELOPMENT AUTHORITY**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Title \_\_\_\_\_

STATE OF            )  
                          ) SS.:  
COUNTY OF        )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

\_\_\_\_\_  
Notary Public

EXHIBIT A  
STATEMENT OF WORK  
(to be inserted here)

## EXHIBIT B

### GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

#### Article I

##### Definitions

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined below shall have, for all purposes of this Agreement, the respective meanings set forth below, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined.

Agreement: The Agreement and Exhibits A, B, C, D and E hereto, all of which are made a part hereof as though herein set forth in full.

Budget: The Budget set forth in Exhibit A hereto.

Contract Administrator: NYSERDA's Director of Contract Management, Cheryl L. Earley, or such other person who may be designated, in writing, by NYSERDA.

Contract Data: Technical Data first produced in the performance of the contract, Technical Data which are specified to be delivered under the contract, or Technical Data actually delivered in connection with the contract.

Contractor: The Contractor identified in Item 2 of page one of the Agreement.

Effective Date: The effective date of this Agreement shall be the date appearing in Item 4 of page one of the Agreement.

Person: An individual, a corporation, an association or partnership, an organization, a business or a government or political subdivision thereof or any governmental agency or instrumentality.

Proprietary Data: Technical Data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

- (i) are not generally known or available from other sources without obligation concerning their confidentiality;
- (ii) have not been made available by the owner to others without obligation concerning its confidentiality; and

(iii) are not already available to NYSERDA without obligation concerning their confidentiality.

Statement of Work: The Statement of Work attached hereto as Exhibit A.

Subcontract: An agreement for the performance of Work by a Subcontractor, including any purchase order for the procurement of permanent equipment or expendable supplies in connection with the Work.

Subcontractor: A person who performs Work directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor) but not including any employees of the Contractor or the Subcontractors.

Technical Data: Recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental or developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer software programs, computer software data bases, and computer software documentation). Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

Unlimited Rights: Rights to use, duplicate, or disclose Contract Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

Work: The Work described in the Exhibit A (including the procurement of equipment and supplies in connection therewith) and the performance of all other requirements imposed upon the Contractor under this Agreement.

## Article II

### Performance of Work

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all of the Work described in the Statement of Work, or cause such Work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform the Work in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Statement of Work. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the Work in accordance with this Agreement.

Section 2.02. Project Personnel. It is understood and agreed that the "Contact Person" identified in Item 3 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of the

overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA.

### Article III

#### Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A Statement of Work.

### Article IV

#### Compensation

Section 4.01. Payments. It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed. In consideration for this Agreement and as full compensation for NYSERDA's share of the costs for the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay, upon submission of proper invoices, the prices stipulated herein for Work delivered or rendered and accepted, less deductions, if any as herein provided. The total price which NYSERDA will pay to the Contractor represents the price of the Work. Subject to the limiting provisions of Article XII hereof, as NYSERDA's price of the Work, NYSERDA will pay to the Contractor the total price of \$\_\_\_\_\_, payment of which will be made according to the Schedule of Payments contained in Section 4.02 hereof.

Section 4.02. Schedule of Payments. Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Milestone Event so identified, the Contractor may submit invoices requesting payment by NYSERDA of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work, including evidence of the Contractor's cost share. NYSERDA shall make payment to the Contractor in accordance with and subject to its Prompt Payment Policy Statement attached hereto as Exhibit D. The Contractor shall be notified by NYSERDA in accordance with Section 504.4 (b)(2) of such Exhibit D, of any information or documentation which the Contractor did not include with such invoice.

Section 4.03. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of the Final Report and all other deliverables contained in Exhibit A, Statement of Work pursuant to Section 6.02 hereof, the Contractor shall submit a request for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. A request for final payment shall include a statement as to whether any invention or patentable devices have resulted from the performance of the Work. All requests for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six months following Acceptance of Work pursuant to Section 6.02 hereof. In accordance with and

subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such request for final payment, the total amount payable pursuant to Section 4.01 hereof, less all Milestone Billing payments previously made to the Contractor with respect thereto.

Section 4.05. Release by the Contractor. The acceptance by the Contractor of final payment shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.06. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to the performance of the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance.

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is \$\_\_\_\_\_. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.08. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

## Article V

### Assignments, Subcontracts and Purchase Orders

Section 5.01. General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling under \$50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source

price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action which would impair its rights there under. The Contractor shall not assign, cancel or terminate any Subcontract without prior written notification to the Contract Administrator as long as this Agreement remains in effect.

## Article VI

### Schedule

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in Exhibit A, Statement of Work.

Section 6.02. Acceptance of Work. The completion of the Work shall be subject to acceptance by NYSERDA in writing of all deliverables as defined in Exhibit A, Statement of Work.

## Article VII

### Force Majeure

Section 7.01. Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting there from, fires, floods, storms, explosions, accidents, riots, strikes, or the delay or failure to perform by any Subcontractor by reason of any cause or circumstance beyond the reasonable control of such Subcontractor.

## Article VIII

### Technical Data

#### Section 8.01. Rights in Technical Data.

(a) Technical Data: Rights in Technical Data shall be allocated as follows:

(1) NYSERDA shall have:

- (i) Unlimited Rights in Contract Data except as otherwise provided below with respect to Proprietary Data; and
- (ii) no rights under this Agreement in any Technical Data which are not Contract Data.

(2) The Contractor shall have:

- (i) the right to withhold Proprietary Data in accordance with the provisions of this clause; and
- (ii) the right to use for its private purposes subject to patent, or other provisions of this Agreement, Contract Data it first produces in the performance of this Agreement provided the data requirements of this Agreement have been met as of the date of the private use of such data.

The Contractor agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of the Contract Administrator.

## Article IX

### Warranties and Guarantees

Section 9.01. Warranties and Guarantees. The Contractor warrants and guarantees that:

(a) it is financially and technically qualified to perform the Work;

(b) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any that may in any way affect the performance of this Agreement;

(c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted construction and design standards and best engineering practices;

(d) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted construction and design standards and best engineering practices;

(e) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(f) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or the NYSERDA's rights hereunder;

(g) it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Work; and

(h) Contractor certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

## Article X

### Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to the performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

## Article XI

### Insurance

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

(a) name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;

(b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and

(c) be reasonably satisfactory to NYSERDA in all other respects.

Section 11.02. Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

(a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

## Article XII

### Stop Work Order; Termination

Section 12.01. Stop Work Order.

(a) NYSERDA may at any time, by written Order to the Contractor, require the Contractor to stop all, or any part of, the Work called for by this Agreement for a period of up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be

specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the order during the period of work stoppage consistent with public health and safety. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- (i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement, and
- (ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

(c) If a Stop Work Order is not cancelled and the Work covered by such order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

(d) Notwithstanding the provisions of this Section 12.01, the maximum amount payable by NYSERDA to the Contractor pursuant to this Section 12.01 shall not be increased or deemed to be increased except by specific written amendment hereto.

#### Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments

(including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefore).

(b) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

(c) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a was intentionally false when made. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

### Article XIII

#### Independent Contractor

Section 13.01. Independent Contractor. The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

### Article XIV

#### Compliance with Certain Laws

Section 14.01. Laws of the State of New York. The Contractor shall comply with all of the requirements set forth in Exhibit C hereto.

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

Section 14.03 Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing

contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by facsimile transmission;
- (iii) by personal delivery;
- (iv) by expedited delivery service; or
- (v) by e-mail.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

**NYSERDA**

Name: Cheryl L. Earley  
Title: Director of Contract Management  
Address: 17 Columbia Circle, Albany, New York 12203  
Facsimile Number: 862-1091  
E-Mail Address: cle@nyserda.org

**[Contractor Name]**

Name:  
Title:  
Address:  
Facsimile Number:  
E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective

representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

## EXHIBIT C

REVISED 9/06

### STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

The parties to the attached agreement, contract, license, lease, amendment, modification or other agreement of any kind (hereinafter, "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than NYSERDA, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. CONFLICTING TERMS. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit B, the terms of this Exhibit B shall control.

7. GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

8. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

9. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to

which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

10. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

11. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

12. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

13. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:

- a. Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b. Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c. Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.
- d. Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

- e. NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.